(F3)

(1)

IN THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH.

Cr.APPEAL NO. 292 /2001.

APPELLANT. (IN JAIL).
Noosir Bai, aged about 23 years, daughter of Prabhu Ram resident of village Kekatipara, Limaudih, P.S.Doondi, Distt. Durg(C.G.).

Versus.

RESPONDENT.
State of Chhattisgarh,
Through the District Magistrate Durg, C.G.

CRIMINAL APPEAL UNDER SECTION 374 CRIMINAL PROCEDURE CODE, 1973.

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 727/01 **सन् 200**

आदेश पत्रक (पूर्वानुबंध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench;
Hon'ble Mr. Justice L.C. Bhadoo &
Hon'ble Mr. Justice Dhirendra Mishra, JJ

22.2.2007

Mrs. Usha Chandrakar, Advocate for the appellant.

Mr. Akhil Mishra, Panel Lawyer for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 15th June, 2001 passed by the Additional Sessions Judge, Balod, District Durg in Sessions Trial No.253/2000 whereby the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 318 of the I.P.C, sentenced her to undergo rigorous imprisonment for life & R.I. for one year and to pay a fine of Rs.500/- & Rs.100/-, in default of payment of fine to further undergo rigorous imprisonment for six months & one months respectively. Both the sentences have been directed to run concurrently. However, co-accused namely Ramkishum alias Khorva was acquitted of the charge under Section 109 read with Section 302 of the I.P.C.

P.T.O.

मामला क्रमांक ..... सन् 200

(आदेश पत्रक (पूर्वानुबंध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

— 2 —

The case of the prosecution, in brief, is that on 18.5.2000 Naresh Kumar (PW-4) lodged a report in the Police Station Dondi about the death of unknown newly born baby. He further informed that on 17.5.2000 Maneshwari Bai informed him that dead body of a newly born baby is lying behind the garden covered with leaves & branches of tree. Based on this information, Merg Intimation (Ex.P-5) was registered, Shri J.P. Kathaut (PW-11), Station House Officer, Police Station Dondi after giving notice (Ex.P-6) to the Panchas prepared the inquest on the dead body of newly born baby, the same was sent for postmortem examination to the Community Health Centre, Dondi, where Dr. L. L. Markendya (PW-7) conducted postmortem examination and prepared the report Ex.P-12. Based on that, F.I.R. (Ex.P-6) was registered. Accused Nausir Bai was also medically examined, her clothes stained with blood were also seized, same were sent for chemical examination to the Forensic Science Laboratory, Raipur from where report Ex.P-20 was received.

After completion of usual investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate First Class, Balod, who in turn committed the case to the Sessions Judge, Durg from where the Additional Sessions Judge has received the case on transfer for trial. The prosecution in order to establish the charge

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

against the accused persons examined eleven witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they simply denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

After hearing learned counsel for the respective parties and perusal of the record, learned Additional Sessions Judge convicted and sentenced accused Nausir Bai, as aforementioned and acquitted co-accused Ramkishun alias Khorva.

We have heard Mrs. Usha Chandrakar, counsel for the accused/appellant and Mr. Akhil Mishra, Panel Lawyer for the State.

Learned counsel for the accused/appellant argued that there is no evidence that the baby died homicidal death and same was born alive. The hydro test of lungs was not conducted and there is no other evidence to establish that the accused/appellant has committed the murder of newly born baby. She also argued that even if it is believed that the accused/appellant gave birth to a child during that time, then also there is no evidence to the effect that the body of newly born baby, which was found in the forest near the pond, was of the baby delivered by the accused/appellant.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, learned Panel Lawyer for the State supported the judgment of trial court.

As far as the question whether the body of newly born baby, which was found near the pond, was born alive and he met with the homicidal death is concerned, Dr. L.L. Marendaya (PW-7) has stated that on 18.5.2000 he conducted the postmortem on the body of newly born child, he found depressed fracture on the head, haemorrhage and contusion on brain of that child. In para-8 of his evidence he has stated that cause of death was shock due to haemorrhage as a result of head injury. His report is Ex.P-12.

Therefore, in view of the above, it is established that the newly born baby, body of which was found near the pond, was born alive.

PW-1 Dr. [Smt.] Shashi Claudius, who examined the accused/appellant, has categorically stated that there was a lacerated wound in the vaginal part of accused in 6° clock position, same was in the size of 2cm x ½cm x 2mm, injury was 7 to 14 days old and hymen was ruptured. The above injury can be occurred at the time of delivery. Vagina was loose, womb was of 10-12 weeks and was soft, on pressing the breast milk was coming out and lochia was coming out from the womb. In the cross-examination this witness has stated that it is incorrect to say that Nausir Bai had not delivered the child.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, from the above medical evidence it is established that Nausir Bai had delivered a child.

Now the question remains that whether the child, which was found near the bond, was of the accused/appellant and secondly, the child, which was delivered by the appellant, was alive. In this connection, Naresh Kumar (PW-4) has stated that the accused persons are residing in his neighbourhood, he was informed by the villagers that a body of newly born baby was lying in the forest, on which he along with villagers went to the place, which was near the pond, and saw that the body of a newly born baby was lying in a basket and the same was covered with leaves & branches of tree. The body was dead and there was blood on the head. He has further stated that clothes of Nausir Bai were seized in front of him. Similar is the evidence of PW-5 Arjun Singh. PW-6 Maneshwari Bai has stated that she went to the pond to take bath about 12 in the noon, at that time Nausir Bai was also there, her clothes were stained with blood, she enquired from her about the blood stains on her clothes but she did not reply and thereafter she went to her house. Thereafter, Kunwar Bai (PW-8) & Fagni Bai informed her about the body of a dead child in the forest. PW-8 Kunwar Bai has also stated that a body of newly born baby was lying between the bushes. Therefore, there is no

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ocular, direct or circumstantial evidence to establish the fact that the body of newly born baby, which was recovered from the forest near the pond, was of the child which was delivered by the accused/appellant. As such, we are of the considered opinion that the prosecution has utterly failed to establish the fact that the body of newly born baby, which was found near the pond, was delivered by the appellant, the same was kept by her and she committed murder of that child. Accordingly, the conviction of the accused/appellant under Sections 302 & 318 of the IPC cannot be sustained and the same are liable to be set aside.

In the result, the appeal succeeds. Conviction & sentences imposed upon appellant-Nausir Bai under Sections 302 & 318 of the IPC are hereby set aside. It is stated that the appellant is in detention since 29.5.2000, thereby she is in detention for more than 6½ years, therefore, she be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.